

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CENDANT PUBLISHING INC.,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

Civil Action No. 05-00414 (JJF)

JURY TRIAL DEMANDED

I.
ANSWER

Defendant Amazon.com, Inc., (“Amazon.com”), by and through its undersigned counsel, demands a jury trial on all issues triable to a jury in this matter and answers the Complaint for Patent Infringement (“Complaint”) of plaintiff Cendant Publishing Inc., (“Plaintiff”), as follows:

THE PARTIES

1. Amazon.com lacks sufficient information to form a belief as to the truth or falsity of the averments in paragraph 1 of the Complaint and therefore denies them.

2. Amazon.com admits that it is a Delaware corporation with its principal place of business at 1200 Twelfth Avenue South, Seattle, Washington 98144. Amazon admits that it operates the website www.amazon.com which allows users to order different items including books and that provides certain personalized features. Amazon denies the remaining averments contained in paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. Amazon.com admits that Plaintiff purports to invoke subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. Amazon.com admits that Plaintiff purports to aver that personal jurisdiction is proper over Amazon.com in this Court.

5. Amazon.com admits that Plaintiff purports to aver that venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b).

NATURE OF THE ACTION

6. Amazon.com admits that Plaintiff purports to plead a cause of action for patent infringement. Amazon.com admits the document attached as Exhibit A to the Complaint appears on its face to be a copy of United States Patent No. 6,782,370 (“the ‘370 patent”). Amazon denies the remaining averments contained in paragraph 6 of the Complaint.

7. Amazon.com admits the ‘370 patent on its face bears a title of “System and Method for Providing Recommendation of Goods or Services Based on Recorded Purchasing History” and an issue date of August 24, 2004. Amazon.com denies the remaining averments contained in paragraph 7 of the Complaint.

8. Amazon admits that the Amazon.com website allows shoppers to place orders for items. Amazon admits that the Amazon.com website can provide certain features for making recommendations and that certain features on the Amazon.com website can be based, *inter alia*, on prior customer purchases. Amazon denies the remaining averments contained in paragraph 8 of the Complaint.

9. Amazon.com lacks sufficient information to form a belief as to the truth or falsity of the averments in paragraph 9 of the Complaint and therefore denies them.

10. Amazon.com lacks sufficient information to form a belief as to the truth or falsity of the averments in paragraph 10 of the Complaint and therefore denies them.

CLAIM 1
INFRINGEMENT OF THE '370 PATENT

11. In response to paragraph 11 of the Complaint, Amazon.com incorporates by reference its responses to paragraphs 1 through 10 of the Complaint.

12. Amazon.com denies the averments contained in paragraph 12 of the Complaint.

13. Amazon.com denies the averments contained in paragraph 13 of the Complaint.

14. Amazon.com denies the averments contained in paragraph 14 of the Complaint.

PLAINTIFF'S DEMAND FOR JURY TRIAL

15. Paragraph 15 of the Complaint purports to be a demand for jury trial. To the extent it makes averments to which Amazon.com can respond, Amazon.com denies the averments in paragraph 15 of the Complaint.

PLAINTIFF'S PRAYER FOR RELIEF

Amazon.com denies that Plaintiff is entitled to the relief it seeks or any relief at all for the allegations made in the Complaint.

II.
AFFIRMATIVE DEFENSES

For its Affirmative Defenses to the Complaint, Amazon.com avers as follows:

FIRST AFFIRMATIVE DEFENSE – NON-INFRINGEMENT

1. Amazon.com has not infringed, and currently does not infringe, the '370 patent directly, contributorily, by inducement, or in any other manner.

SECOND AFFIRMATIVE DEFENSE - INVALIDITY

2. The claims of the '370 patent are invalid for failure to satisfy one or more of the conditions for patentability specified in Title 35 of the United States Code, sections 101, *et seq.*

THIRD AFFIRMATIVE DEFENSE – ESTOPPEL

3. Amazon.com is informed and believes, and thereon avers, that the relief sought by Plaintiff is barred under the doctrine of prosecution history estoppel.

FORTH AFFIRMATIVE DEFENSE – DEDICATION

4. Amazon.com is informed and believes, and thereon avers, that the relief sought by Plaintiff is barred because all embodiments not literally claimed were dedicated to the public.

FIFTH AFFIRMATIVE DEFENSE – FAILURE TO STATE A CLAIM

5. The Complaint fails to state a claim upon which relief can be granted.

**III.
COUNTERCLAIMS**

For its Counterclaims against Plaintiff, defendant and counterclaimant Amazon.com avers as follows:

1. Amazon.com counterclaims against Plaintiff pursuant to the patent laws of the United States, Title 35 of the United States Code, with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the courts of the United States, 28 U.S.C. §§ 2201 and 2202, and Federal Rule of Civil Procedure 13.

THE PARTIES

2. Amazon.com is a Delaware corporation with its principal place of business at 1200 Twelfth Avenue South, Seattle, Washington 98144.

3. Upon information and belief, Plaintiff is a Delaware corporation with a place of business at 10750 West Charleston Blvd, Suite 130, Las Vegas, Nevada 89135.

JURISDICTION AND VENUE

4. This Court has jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201(a), and 2202.

5. This Court has personal jurisdiction over the Plaintiff by virtue, *inter alia*, of its filing of complaints in this Court.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

COUNTERCLAIM — DECLARATORY JUDGMENT

7. By virtue of the averments of Plaintiff's Complaint in this action and Amazon.com's Answer thereto, an actual controversy exists between Amazon.com and Plaintiff as to whether the '370 patent is invalid, unenforceable and/or not infringed by Amazon.com.

**COUNT I:
DECLARATION OF NON-INFRINGEMENT RE '370 PATENT**

8. Amazon.com restates and incorporates by reference each of the averments of paragraphs 1 through 6 of Section III of this Answer.

9. Plaintiff claims to be the owner by assignment of all legal rights, title and interests in the '370 patent, including the right to enforce the '370 patent.

10. Plaintiff in this action alleges infringement of the '370 patent by Amazon.com.

11. Amazon.com is not infringing and has not infringed any valid claim of the '370 patent, and Plaintiff is entitled to no relief for any Claim in the Complaint for, *inter alia*, the reasons in paragraphs 1–5 of Section II of this Answer.

**COUNT II:
DECLARATION OF INVALIDITY OF '370 PATENT**

12. Amazon.com restates and incorporates by reference each of the averments of paragraphs 1 through 11 of Section III of this Answer.

13. In its Complaint, Plaintiff avers that the '370 patent is valid.

14. Each and every claim of the '370 patent is invalid for failure to satisfy one or more of the conditions for patentability set forth in 35 U.S.C. § 1, *et seq.*

PRAYER FOR RELIEF


WHEREFORE, Amazon.com prays for judgment with respect to Plaintiff's Complaint and Amazon.com's Affirmative Defenses and Counterclaims as follows:

- a. judgment be entered against Plaintiff and in favor of Amazon.com on the claims set forth in the Complaint filed by Plaintiff and that such claims be dismissed with prejudice;
- b. this Court find and declare that the '370 patent is not infringed by Amazon.com;
- c. this Court find and declare that the claims of '370 patent are invalid;
- d. this Court find that this is an exceptional case and award Amazon.com its attorneys' fees pursuant to 35 U.S.C. § 285 or otherwise; and
- e. this Court grant Amazon.com such other and further relief as the Court shall deem just and proper.

Dated: August 10, 2005

Respectfully Submitted,

AMAZON.COM, INC.

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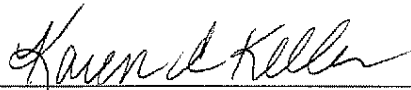
DEMAND FOR JURY TRIAL

Defendant Amazon.com demands a trial by jury on all issues so triable.

Dated: August 10, 2005

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CERTIFICATE OF SERVICE

I, Karen E. Keller, hereby certify that on August 10, 2005, I caused to be electronically filed a true and correct copy of the foregoing document with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record:

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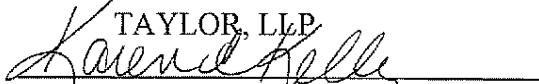
I further certify that on August 10, 2005, I caused a copy of the foregoing document to be served by hand delivery on the above-listed counsel of record and on the following non-registered participants in the manner indicated:

BY FEDERAL EXPRESS

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